



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2007

Ms. M. Ann Montgomery
Assistant Ellis County and District Attorney
1201 North Highway 77, Suite 104
Waxahachie, Texas 75165-7832

OR2007-04451

Dear Ms. Montgomery:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 276598.

The Ellis County Sheriff's Office (the "sheriff") received a request for information relating to calls involving a specified address and four named individuals. You state that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of this test must be established. *See id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction

between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

We note that section 552.023 of the Government Code gives a person or a person's *authorized representative* a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interests. *See* Gov't Code § 552.023. Accordingly, none of the submitted information may be withheld under section 552.101 in order to protect the requestor's common-law privacy interests. However, to the extent the sheriff maintains law enforcement records depicting any of the named individuals other than the requestor as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. We further note that a request for law enforcement records regarding a specific address does not implicate the privacy interests of an individual.

We note that you have submitted records that do not list any of the other named individuals as a suspect, arrestee, or defendant. These documents may not be withheld under section 552.101 in conjunction with common-law privacy. You seek to withhold a portion of these records under section 552.108(a)(2) of the Government Code, which excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the information you have marked relates to criminal investigations that have concluded in results other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) is applicable to the marked information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of basic information, which must be released, the sheriff may withhold the marked information under section 552.108(a)(2) of the Government Code. We note that you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

You also claim that a portion of the remaining submitted information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that "relates to ... a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this

state.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the sheriff must withhold the Texas motor vehicle record information we have marked.

In summary, to the extent the sheriff maintains law enforcement records depicting any of the named individuals other than the requestor as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. Except for basic information which must be released, the sheriff may withhold the marked information under section 552.108(a)(2) of the Government Code. The marked motor vehicle record information must be withheld under section 552.130 of the Government Code. The remaining submitted information must be released.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

¹As our ruling is dispositive, we do not address your remaining claims, except to note that basic information held to be public in *Houston Chronicle* is not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eeg

Ref: ID# 276598

Enc. Submitted documents

c: Ms. Amy Butler
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Ferris, Texas 75125
(w/o enclosures)